

JAMES R. CASSADY
Claimant

METZ BAKING COMPANY
Respondent

SENTRY INSURANCE COMPANY
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

ISSUES

- ## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 4, 1994, the Administrative Law Judge entered an Award for workers compensation benefits which was timely appealed to the Appeals Board. On July 5, 1994, the Appeals Board determined the issues raised on appeal, and found in favor of the claimant, affirming the Administrative Law Judge in part, and modifying the decision in part. On July 6, 1994, demand for payment pursuant to K.S.A. 44-512a was sent by the claimant's counsel to respondent and insurance carrier which was received on July 7, 1994, by the respondent and on July 8, 1994, by the insurance carrier. On July 28, 1994, respondent filed its Notice of Appeal to the Kansas Court of Appeals, appealing the decision of the Appeals Board. Pursuant to K.S.A. 44-556(b), respondent paid 14 weeks of compensation at the rate of \$278.00 per week in the total amount of \$3,890.00.

K.S.A. 44-556 provides that:

“(a) Any action of the board pursuant to the workers compensation act, other than the disposition of appeals of preliminary orders or awards under K.S.A. 44-534a and amendments thereto, shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions by appeal directly to the court of appeals. Any party may appeal from a final order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order. Such review shall be upon questions of law.

“(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision, and for the period of time after the board's decision and prior to the decision of the court of appeals on review.”

It is clear from the facts of this case that respondent timely appealed the decision of the Appeals Board to the Court of Appeals, and, therefore, respondent's only obligation pursuant to statute to pay benefits is for the ten (10) week period preceding the Board's decision and during the pendency of the appeal. The evidence reveals that the respondent has complied with the provisions of K.S.A. 44-566.

The Appeals Board finds that the payment of compensation was not due pursuant to K.S.A. 44-512a in that the time for the appeal to the Court of Appeals had not expired. Penalties would not be appropriate, because the decision of the Appeals Board would not be final until the time for appeal to the Court of Appeals expired. The Order of the Appeals Board dated July 5, 1994, was not a final order and, therefore, compensation could not have been past due as contemplated by K.S.A. 44-512a.

It is noted that the Court of Appeals has now entered its decision in this case reversing both the Award of Administrative Law Judge Robert H. Foerschler, and the Order of the Appeals Board, and found this case to be noncompensable.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated December 29, 1994, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, Kansas
Patrick White, Kansas City, Missouri
Charles D. Vincent, Paola, Kansas
Jeff K. Cooper, Topeka, Kansas
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director